

MINNESOTA SENTENCING GUIDELINES COMMISSION

Sentencing Practices

Criminal Vehicular Homicide and Injury
Offenses Sentenced in 2011

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Summary of 2011 Data

In 2011, 34 offenders were sentenced for criminal vehicular homicide (CVH). All 34 offenders received a sentence that included incarceration (prison or jail), with 56 percent receiving a prison sentence. The average pronounced prison sentence was 65 months, a decrease from the average of 71 months in 2010. Forty-four percent of CVH offenders were required to serve time in local facilities. The average local jail time pronounced was 278 days.

Eighty-seven offenders were sentenced for criminal vehicular injury (CVI). The total incarceration rate for CVI was 91 percent, with 83 percent receiving local jail time and 8 percent receiving a prison sentence. The majority (70%) of CVH and CVI offenders sentenced had no prior DWIs, CVIs, or CVHs listed on their sentencing worksheets.

The following report and tables summarize sentencing policies and practices for offenders convicted and sentenced for criminal vehicular homicide and injury in 2011. A summary of how the Sentencing Guidelines work and a copy of the Sentencing Guidelines Grid are included at the end of the report.

Presumptive Sentences & Legislative History

Under [Minn. Stat. § 609.21](#), a person may be charged with either criminal vehicular homicide (CVH), which involves operating a motor vehicle in a manner that causes the death of a human being, or criminal vehicular injury (CVI), which involves operating a motor vehicle in a manner that causes some level of bodily harm.

Criminal Vehicular Homicide

When the Guidelines were first implemented in 1980, CVH was ranked at Severity Level 5 and the Guidelines recommended a stayed sentence for offenders with a criminal history score of two or less. Effective August 1, 1989, the Commission raised CVH to Severity Level 6. The Commission also decided that the presumptive sentence should be prison, regardless of the offender's criminal history score.

The 1990 Legislature revised the CVH statute (Minn. Stat. § 609.21), removing the phrase "in a negligent manner" from the clause relating to driving while over the legal limit, and adding a new clause for having an alcohol concentration at or above the legal limit within two hours of driving. The Commission believed that these clauses were less serious than those involving gross negligence or negligence, and therefore increased the rankings for the gross negligence and negligence clauses to severity level 7. In response to a directive from the 1994 Legislature, the Commission increased the severity level for all CVH offenses to 7.

The 1996 Legislature amended CVH to include leaving the scene of an accident resulting in death. The Commission acknowledged the legislative intent to treat these offenses similarly to CVH by maintaining its ranking. In 2002, in order to accommodate the new felony DWI crime, the Commission created a new severity level between 6 and 7. As a result, CVH was reclassified to Severity Level 8; however, the presumptive durations were unchanged.

Today, all persons convicted of criminal vehicular homicide (CVH) are recommended prison (effective for offenses occurring on or after August 1, 1989). The recommended sentence durations depend on the offender's criminal record.

Criminal Vehicular Injury

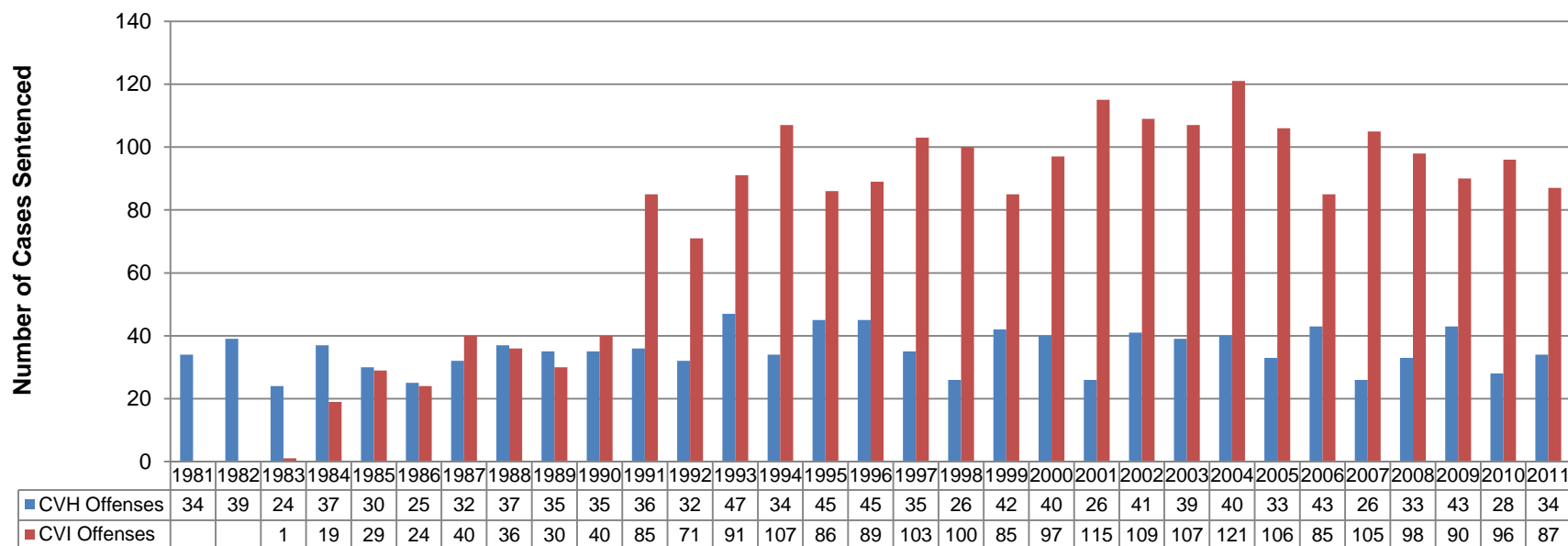
When the Guidelines were implemented in 1980, there were no felony statutory provisions for CVI. Effective July 1, 1983, the legislature added a provision for CVI resulting in great bodily harm. This provision was ranked at severity level 3. When the severity levels were increased for CVH in 1989, the severity level for CVI resulting in great bodily harm was also increased from 3 to 5. In 1990, a felony provision for offenses resulting in substantial bodily harm was added. The Commission ranked this offense at Severity Level 3.

In 1996, CVI was amended to include leaving the scene of an accident. As with CVH, the severity level rankings were maintained, acknowledging the legislative intent to treat this offense similarly to CVI. Today, criminal vehicular injury (CVI) is ranked at Severity Level 5 if the offense results in great bodily harm and Severity Level 3 if the offense results in substantial bodily harm. At Severity Level 5, the Guidelines recommend a probationary sentence if the offender's criminal history score is two or less. At Severity Level 3, the Guidelines recommend probation at a criminal history score of three or less.

Case Volume & Distribution¹

In 2011, 34 offenders were sentenced for CVH, an increase from the 28 offenders in 2010. Three of the CVH offenders were convicted of leaving the scene of an accident. The number of offenders sentenced each year for CVH has varied, but has never exceeded 50 (Figure 1). There were 87 offenders sentenced for CVI, a decrease from the 96 sentenced in 2010. Of the 87 cases sentenced, 31 involved great bodily harm and 56 were for substantial bodily harm. Five of the CVI-substantial bodily harm offenders and one of the CVI-great bodily harm offenders were convicted of leaving the scene of an accident, a decrease from eleven offenders in 2010.

Figure 1. Number of CVH / CVI Cases Sentenced: 1981-2011

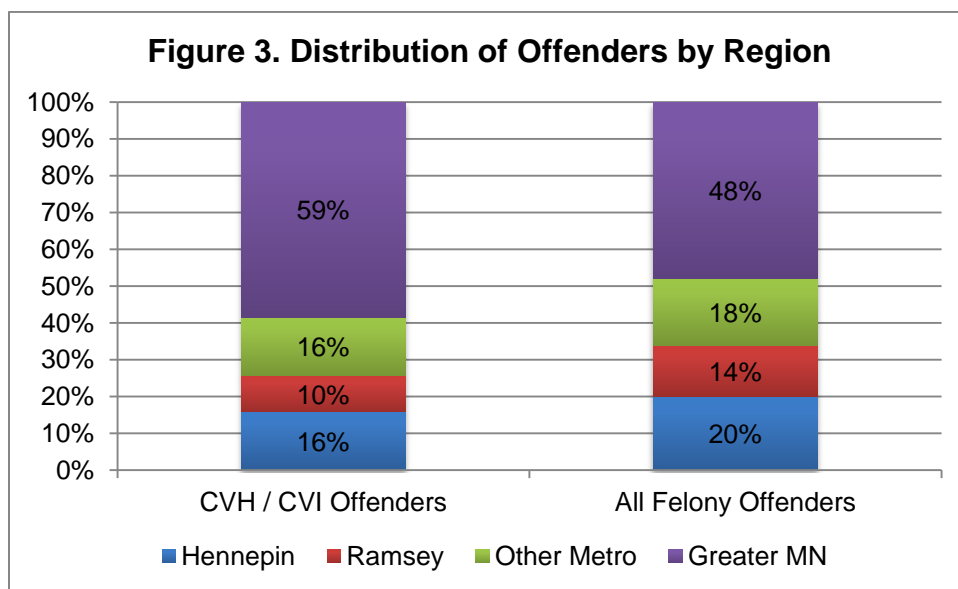
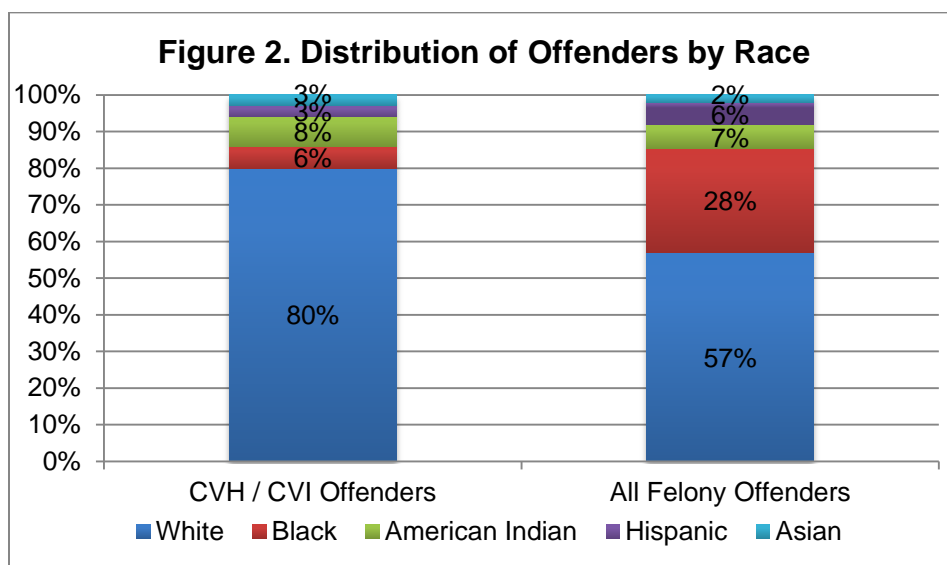


¹ Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

Distribution of Cases

CVH/CVI offenders are slightly more likely to be female than the total felony population, with 22% percent of offenders being female (compared to 17% female in the total felony population). The average offender age is 33-years old, compared to 31-years old for the total felony population.

A much higher percentage of CVH/CVI offenders are white compared with the total felony population (Figure 2). CVH/CVI offenses occur more frequently in Greater Minnesota than in the Metro area (Figure 3).

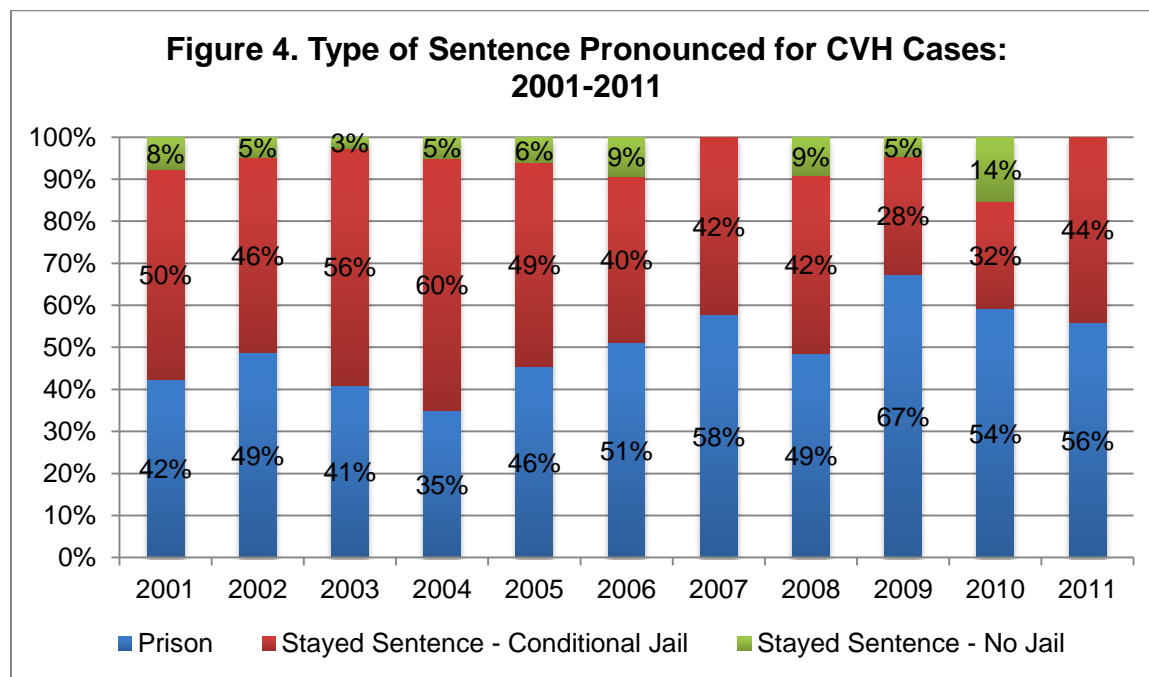


Sentencing Practices

Criminal Vehicular Homicide

Incarceration Rates

Because CVH is ranked at Severity Level 8 on the Standard Grid, all offenders are recommended prison, regardless of their criminal history score. In 2011, all CVH offenders received incarceration as part of their sentence; 56 percent received prison sentences and 44 percent received jail terms as a condition of probation (Figure 4). The imprisonment rate slightly increased from 54 percent in 2010. Frequently cited reasons for departure from the recommended prison sentence can be found in the Departures section of this report (p.15).



Sentence Durations

The average pronounced prison sentence was 65 months, an eight percent decrease from the 71-month average in 2010, which was the longest average sentence ever observed. The average jail term pronounced as a condition of probation was 278 days, a decrease from the average of 317 days in 2010 (Table 1).

Table 1. Length of Pronounced Sentence for CVH Cases, Sentenced 1981-2011

Sentencing Year	Pronounced Prison Sentence		Pronounced Conditional Confinement	
	Number of Cases	Avg. Length (in months)	Number of Cases	Avg. Length (in days)
1981	1	18.0	20	207
1982	5	31.8	25	248
1983	2	39.0	20	182
1984	7	35.6	27	169
1985	1	18.0	26	222
1986	4	23.3	21	179
1987	1	18.0	30	217
1988	2	29.5	32	226
1989	5	35.8	30	233
1990	7	24.6	24	258
1991	18	38.2	16	207
1992	17	47.3	15	293
1993	29	49.9	16	261
1994	15	49.7	17	289
1995	26	46.8	18	305
1996	20	62.0	22	275
1997	18	54.9	16	303
1998	9	61.2	16	308
1999	30	59.8	12	329
2000	20	52.6	17	338
2001	11	58.2	13	329
2002	20	63.6	19	341
2003	16	54.1	22	312
2004	14	51.7	24	312
2005	15	67.3	16	319
2006	22	53.4	17	288
2007	15	58.6	11	327
2008	16	69.3	14	308
2009	29	52.3	12	275
2010	15	71.2	9	317
2011	19	65.1	15	278

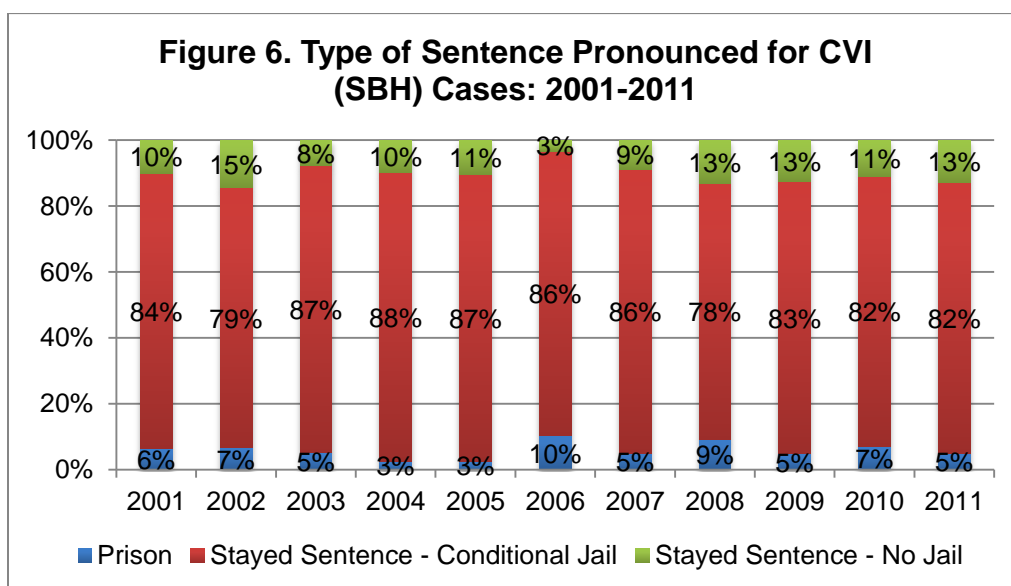
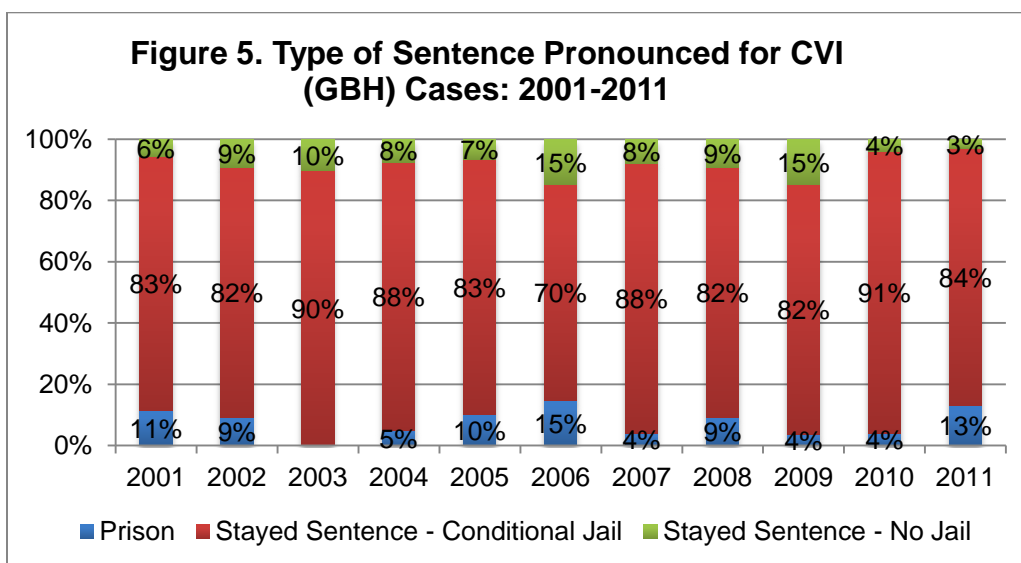
Criminal History Scores

It is often thought to be interesting to review the prior offenses that make up a criminal vehicular homicide offender's criminal history score to see if they are possibly alcohol-related driving offenses. Thirteen (38%) of the 34 CVH offenders had one or more misdemeanor or gross misdemeanor DWI or CVI convictions listed as prior offenses on their sentencing worksheets. None of the CVH offenders had a prior felony DWI conviction, seven had a prior misdemeanor or gross misdemeanor DWI, and six had a prior felony CVH or CVI conviction on his/her sentencing worksheet.

Criminal Vehicular Injury

Incarceration Rates

Criminal vehicular injury comprises two felony offenses: operating a motor vehicle in a manner that causes great bodily harm (GBH); and operating a motor vehicle in a manner that causes substantial bodily harm (SBH). In 2011, the total incarceration rate (both offenders sentenced to prison and local jail) for all CVI sentences was 91 percent (79 offenders), which is the same rate as those sentenced in 2010. Twenty-six CVI-GBH offenders (84%) received stayed sentences that included jail as a condition of probation, a decrease from the rate observed in 2010 (Figure 5). Four offenders (13%) received an executed prison sentence, an increase from that observed in 2010. Forty-six CVI-SBH offenders (82%) received jail time, which is the same percent as in 2010 (Figure 6). Three CVI-SBH offenders (5%) were sentenced to prison, down from seven percent in 2010.



Sentence Durations

As Table 2 demonstrates, the four offenders sentenced to prison for CVI–GBH received an average pronounced sentence of 33 months. The average jail term pronounced for CVI–GBH offenders sentenced to jail as a condition of probation was 217 days, a 48 percent increase from 147 days in 2010. Table 3 shows that for CVI–SBH offenders, the average pronounced prison sentence was 21 months, the same as that observed in 2010. The average jail term was 86 days, a slight decrease from the 2010 average of 88 days.

**Table 2. Length of Pronounced Sentence for CVI - GBH Cases
Sentenced 1984-2011**

Sentencing Year	Pronounced Prison Sentence		Pronounced Conditional Confinement	
	Number of Cases	Avg. Length (in months)	Number of Cases	Avg. Length (in days)
1984	1	13.0	15	131
1985	0	---	24	110
1986	2	21.0	18	111
1987	4	19.5	27	138
1988	3	21.0	29	159
1989	1	19.0	31	150
1990	5	33.0	31	171
1991	8	38.8	37	168
1992	2	28.0	27	217
1993	2	27.0	33	239
1994	1	30.0	26	204
1995	5	45.4	18	137
1996	5	39.8	20	202
1997	4	35.5	27	204
1998	2	47.5	30	200
1999	3	28.0	21	214
2000	0	---	26	207
2001	4	30.0	29	174
2002	3	28.6	27	173
2003	0	---	26	178
2004	2	40.5	35	185
2005	3	40.7	25	157
2006	4	32.0	19	153
2007	1	23.0	22	125
2008	2	33.0	18	156
2009	1	18.0	22	112
2010	1	57.0	21	147
2011	4	32.5	26	217

**Table 3. Length of Pronounced Sentence for CVI - SBH Cases
Sentenced 1990-2011²**

Sentencing Year	Pronounced Prison Sentence		Pronounced Conditional Confinement	
	Number of Cases	Avg. Length (months)	Number of Cases	Avg. Length (days)
1990	0	---	2	83
1991	1	15.0	38	128
1992	1	19.0	36	135
1993	3	21.7	51	125
1994	4	22.8	65	131
1995	3	15.7	50	134
1996	0	---	53	102
1997	5	18.4	60	137
1998	4	19.8	61	109
1999	4	25.5	49	115
2000	2	17.5	57	98
2001	5	19.0	67	109
2002	5	20.6	60	113
2003	4	20.5	68	93
2004	2	16.5	71	113
2005	2	22.5	66	93
2006	6	18.3	50	84
2007	4	18.0	69	96
2008	7	17.6	59	100
2009	3	26.3	52	101
2010	5	21.0	60	88
2011	3	20.7	46	86

Criminal History Scores

As with criminal vehicular homicide offenders, it may be of interest to review the prior offenses that make up an offender's criminal history score to see if they are possibly alcohol-related driving offenses. Twenty (23%) of the 87 CVI offenders had one or more prior misdemeanor or gross misdemeanor DWI or CVI offense listed on their sentencing worksheet. None of the CVI offenders had a prior felony DWI conviction and six had prior felony CVH or CVI convictions on the sentencing worksheet.

² Effective for cases occurring on or after August 1, 1990, Criminal Vehicular Injury-Substantial Bodily Harm is ranked at Severity Level 3. The provisions dealing with Substantial Bodily Harm were added August 1, 1990. In cases in which the Court does not sentence an offender to prison, the judge may pronounce any number of intermediate sanctions. Intermediate sanctions include: probation, local incarceration (jail/workhouse) time, residential and/or non-residential treatment, restitution, community work service, fines, and other types of sanctions.

Departures from the Guidelines

Departure information is presented separately for CVH and CVI offenses. The Guidelines establish a presumptive sentence for felony offenses based on the severity of the offense and the offender's criminal history score. The presumptive sentence is based on the typical case, however, the court may depart from the Guidelines when substantial and compelling circumstances exist. A "departure" is a pronounced sentence other than that recommended in the appropriate cell of the applicable Grid. There are two types of departures – dispositional and durational – as further explained below. Since the presumptive sentence is based on "the typical case," the appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.

While the court ultimately makes the sentencing decision, other criminal justice professionals and victims participate in the decision-making process. Probation officers make recommendations to the courts regarding whether a departure from the presumptive sentence is appropriate, and prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. Victims are provided an opportunity to comment regarding the appropriate sentence as well. Therefore, these departure statistics should be reviewed with an understanding that, when the court pronounces a particular sentence, there is typically agreement or acceptance among the other actors that the sentence is appropriate. Only a small percent of cases (1% to 2%) result in an appeal of the sentence pronounced by the court.

Description of Departure Types

Dispositional Departure. A "dispositional departure" occurs when the court orders a disposition other than that recommended in the Guidelines. There are two types of dispositional departures: mitigated and aggravated. A mitigated dispositional departure occurs when the Guidelines recommend a prison sentence but the court pronounces a stayed sentence. An aggravated dispositional departure occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence.

Durational Departure. A "durational departure" occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid. There are two types of durational departures: aggravated durational departures and mitigated durational departures. An aggravated durational departure occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid. A mitigated durational departure occurs when the court pronounces a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

Criminal Vehicular Homicide

The mitigated dispositional departure rate for CVH offenses has consistently been higher than the overall departure rate for all felony offenses that are recommended prison according to the sentencing guidelines. In 2011, the mitigated dispositional departure rate for CVH offenses was 44 percent (Figure 7) while the overall departure rate for all felony offenses was 34 percent. Table 4 provides the most commonly cited reasons for departure in cases of mitigated dispositional departure. Table 4 also contains plea agreement information: The court stated either that there was a plea agreement for the departure or that the prosecutor recommended the departure or did not object to the departure in 12 (80%) of the 15 mitigated dispositional departures.

For the 19 CVH offenders who received prison sentences, none received an aggravated durational departure and 1 received a mitigated durational departure. For the mitigated durational departure, the reason cited was that the offender shows remorse / accepts responsibility. The court cited plea negotiation as a reason for departure and that the departure was recommended by the prosecutor.

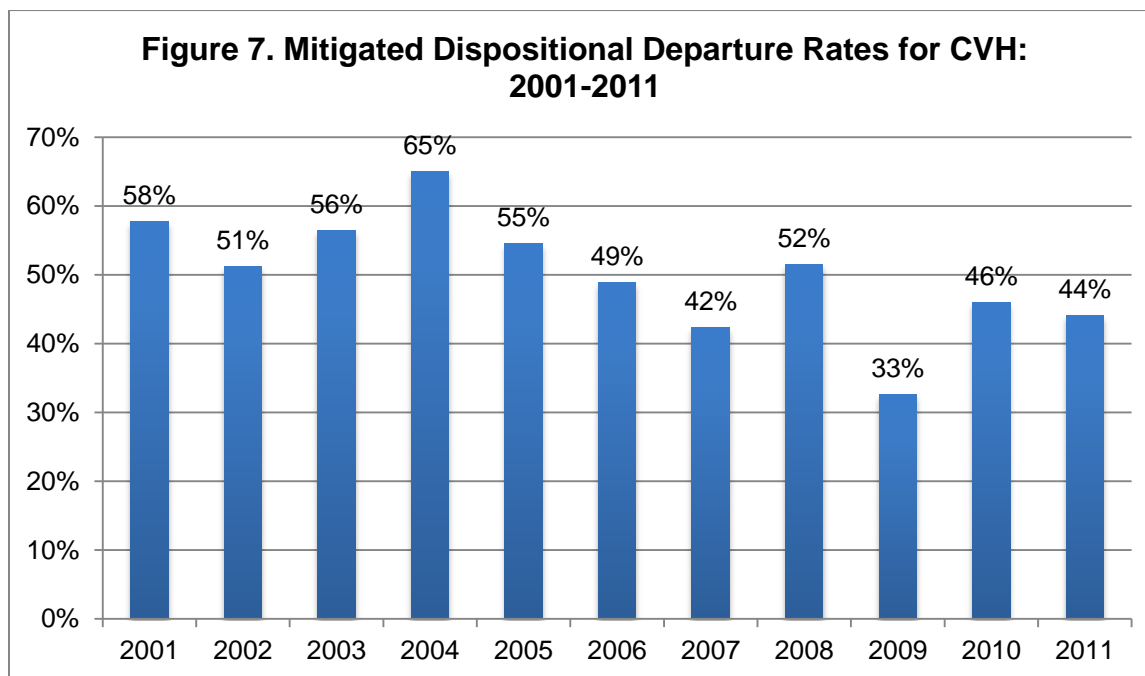


Table 4. Reasons Cited for Mitigated Dispositional Departures in CVH Cases Sentenced 2001-2011³

Departure Reasons	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Amenable to Treatment	27%	29%	50%	69%	28%	38%	55%	29%	38%	54%	27%
Amenable to Probation	27%	48%	59%	69%	61%	62%	91%	65%	64%	85%	67%
Recommended by Victim's Family	33%	62%	23%	35%	33%	10%	27%	24%	21%	15%	40%
No Prior Record	13%	14%	5%	12%	---	---	---	12%	---	---	7%
Ensure Compliance with Probation or Allow Longer Supervision	33%	33%	18%	35%	6%	24%	---	18%	21%	8%	7%
Ensure Restitution & Financial Penalties Paid	7%	10%	5%	19%	17%	---	9%	6%	---	8%	7%
Shows Remorse/Accepts Responsibility	33%	19%	36%	46%	44%	24%	73%	41%	71%	85%	87%
Prosecutor Objects	7%	10%	14%	19%	9%	10%	29%	12%	14%	15%	7%
Prosecutor does not Object	7%	10%	9%	15%	18%	21%	14%	12%	14%	--	27%
Recommended by Prosecutor	13%	33%	27%	15%	27%	50%	14%	18%	14%	46%	27%
Plea Negotiation	40%	52%	59%	31%	82%	71%	57%	59%	57%	69%	60%
Number of Mitigated Dispositional Departures	15	21	22	26	18	21	11	17	14	13	15

³The most common reasons cited for dispositional departures, as submitted by sentencing judges and coded by MSGC staff. Up to four departure reasons and three plea agreement reasons are coded. Percentages are for reasons cited. For example, 527 percent of the mitigated dispositional departure reports in 2011 cited "amenable to treatment" as a reason justifying the departure.

Criminal Vehicular Injury

There were six CVI offenders for which the presumptive disposition was prison; and all of these offenders received prison sentences (so there were no mitigated dispositional departures). Since 2001, there have never been more than ten cases of CVI where the presumptive disposition is prison. Because the number of offenders with presumptive prison sentences is relatively low, it is not very meaningful to discuss “trends” in the dispositional departure rates as they can fluctuate greatly from year-to-year. There were no durational departures for CVI cases in 2011.

How the Guidelines Work

Minnesota's Guidelines are based on a grid structure. The vertical axis of the Grid represents the **severity** of the offense for which the offender was convicted. The horizontal axis represents a measure of the offender's **criminal history**. The Commission has ranked felony level offenses into eleven severity levels. Offenses included in each severity level are listed in the **Severity Reference Table** in the *Minnesota Sentencing Guidelines and Commentary*.

The criminal history index measures the offender's prior record and consists of four measures of prior criminal behavior: (1) a weighted measure of prior felony sentences; (2) a limited measure of prior misdemeanor/gross misdemeanor sentences; (3) a limited measure of the prior serious juvenile record; and (4) a "custody status" measure which indicates if the offender was on probation or parole when the current offense was committed.

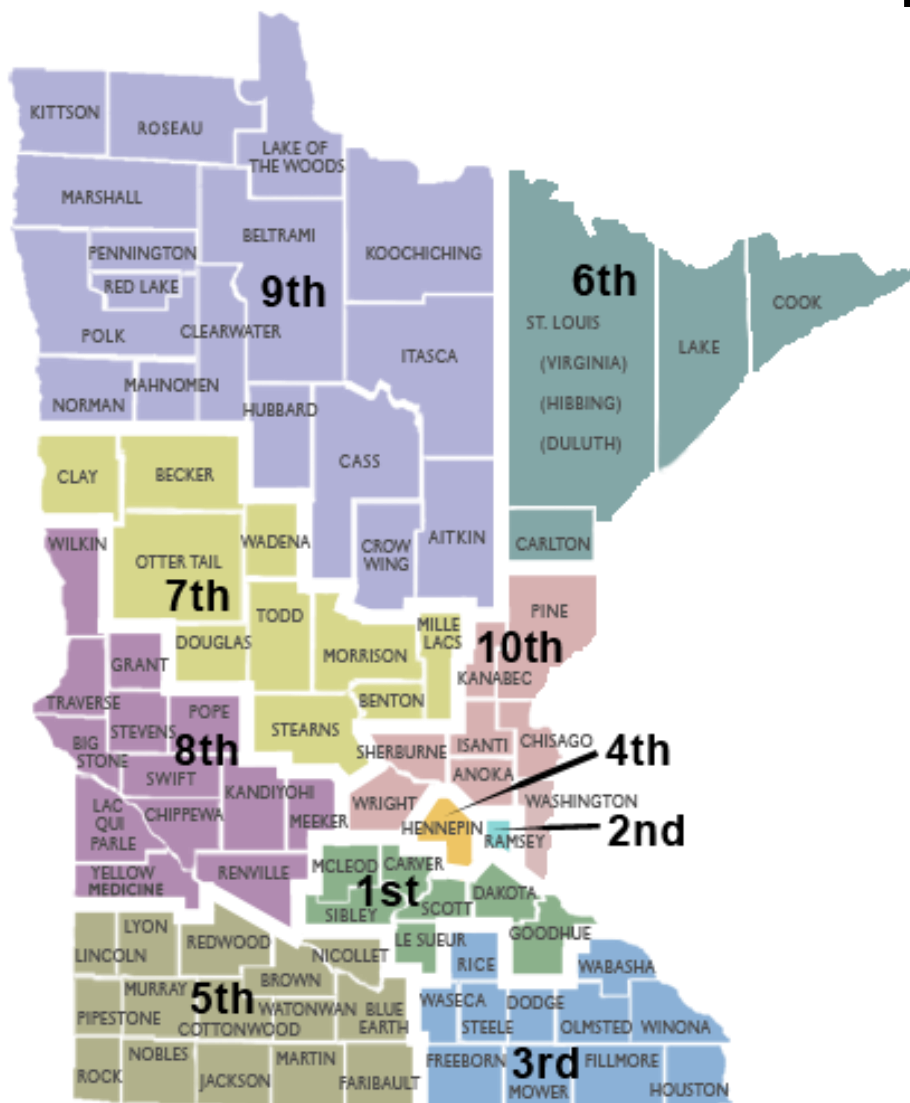
The recommended (presumptive) guideline sentence is found in the cell of the Grid in which the offender's criminal history score and severity level intersect. The Guidelines recommend imprisonment in a state prison in the non-shaded cells of the Grid.

The Guidelines generally recommend a stayed sentence for cells in the shaded area of the Grid. When a sentence is stayed, the court typically places the offender on probation and may require up to a year of conditional confinement in a local facility (jail or workhouse). Other conditions such as fines, restitution, community work service, treatment, house arrest, etc. may also be applied to an offender's sentence. There are, however, a number of offenses that carry a presumptive prison sentence regardless of where the offender is on the Guidelines Grid (e.g., offenses involving dangerous weapons which carry mandatory minimum prison terms, and drug and burglary offenses).

The number in the cell is the recommended length of the prison sentence in months. As explained above, sentences in shaded boxes are generally stayed probationary sentences. For cases in the non-shaded cells of the Grid, the Guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be within the Guidelines.

It is not possible to fully explain all of the policies in this brief summary. Additional information on the Guidelines is available by contacting the Commission's office. The *Minnesota Sentencing Guidelines and Commentary* is available online at <http://www.msgc.state.mn.us>.

Minnesota Judicial District Map




<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Fifth</u>	<u>Sixth</u>	<u>Seventh</u>	<u>Eighth</u>	<u>Ninth</u>	<u>Tenth</u>
Carver	Ramsey	Dodge	Hennepin	Blue Earth	Carlton	Becker	Big Stone	Aitkin	Anoka
Dakota		Fillmore		Brown	Cook	Benton	Chippewa	Beltrami	Chisago
Goodhue		Freeborn		Cottonwood	Lake	Clay	Grant	Cass	Isanti
LeSueur		Houston		Faribault	St. Louis	Douglas	Kandiyohi	Clearwater	Kanabec
McLeod		Mower		Jackson		Morrison	LacQuiParle	Crow Wing	Pine
Scott		Olmsted		Lincoln		Otter Tail	Meeker	Hubbard	Sherburne
Sibley		Rice		Lyon		Stearns	Pope	Itasca	Washington
		Steele		Martin		Todd	Renville	Kittson	Wright
		Wabasha		Murray		Wadena	Swift	Koochiching	
		Waseca		Nicollet			Traverse	Lake-Woods	
		Winona		Nobles			Wilkin	Mahnomen	
				Pipestone			Yellow Medicine	Norman	
				Redwood				Pennington	
				Rock				Polk	
				Watonwan				Red Lake	
								Roseau	


Minnesota Judicial Branch at <http://mncourts.gov/?page=238>

Sentencing Guidelines Grid – Effective August 1, 2012

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>)	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ³	426 363-480 ³
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>)	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-86
<i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$2,500)</i>	3	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ 12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.